

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(BOSTON DIVISION)

MELISSA MARSHALL .)	
)	
Plaintiff,)	
)	
-v-)	Docket No. _____
)	
UNITED STATES OF AMERICA,)	
)	
Defendant,)	JURY TRIAL DEMANDED ON ALL ISSUES SO TRIABLE
)	

**VERIFIED COMPLAINT SEEKING A DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND DAMAGES FOR A WRONGFUL LEVY BY THE
UNITED STATES ON PROPERTY OF THE PLAINTIFF**

This Action

1. Plaintiff Melissa Marshall (hereinafter "Plaintiff) brings this action because defendant United States of America (the "United States"), acting through the Internal Revenue Service (the "IRS"), has wrongfully exercised tax lien rights it claims to have on any property owned by her father, Michael T. Marshall (hereinafter sometimes referred to as "Father") by wrongfully filing a lien on property not belonging to her Father but rather belonging to Plaintiff. Specifically, the United States has filed a Notice of Federal Tax Lien on Plaintiff's home seeking thereby to secure that property for a tax debt the IRS alleges that her Father, not Plaintiff, owes for taxes claims to be due and owing to the IRS.

2. Plaintiff owes no taxes to the IRS and therefore the property involved, which belongs exclusively to her and not to her Father, has been wrongfully subjected to a lien and encumbered by the IRS. This action seeks remove that improper lien and seeks attorneys' fees and damages for its having been wrongfully filed.

3. This action does not dispute the tax debt allegedly owed by Plaintiffs' Father to the IRS because that is a separate matter between her Father and the IRS. Whatever he may owe, if anything, cannot form the basis of a lien being filed on her property.

Jurisdiction and Venue

4. This Court has jurisdiction under 26 U.S.C. §7426(a) because the United States has wrongfully filed a lien on Plaintiff's primary home, owned exclusively by her, to secure a tax debt alleged by the IRS to be owed by her Father, who is Michael T. Marshall, and which tax debt is not owed by Plaintiff. Indeed the IRS does not assert that Plaintiff is liable for any of the tax debt involved.

5. Venue is proper in this Court under Title 28 U.S.C. §1391 since the property at issue is located within this District, the Defendant is found here, and a substantial amount of the conduct giving rise to this case occurred within this District..

The Parties

6. Plaintiff Melissa Marshall is a resident at 11 Stage Fort Avenue, Gloucester, Massachusetts.

7. Defendant United States acted through its agency, the IRS, to serve the tax lien involved on the home of Plaintiff thereby causing her home to be encumbered with a lien for a debt she does not owe.

Non-Party, Michael T. Marshall, the Father

8. Plaintiff's Father, Michael T. Marshall, is a resident of Gloucester, Massachusetts living in an apartment located on the Plaintiffs property, which is her home located at 11 Stage Fort Avenue. The Father is the person who owes the taxes, if

any, which give rise to the filing of the lien on Plaintiff's home. However, he has no right, title, or other ownership interest in that property which can be the subject of a lien or levy to cover or pay his debts, whether to the IRS or to any other creditor.

9. According to the Notice of Federal Tax Lien which has been filed on the Plaintiff's property, a copy of which is attached to this Complaint as Exhibit A, the IRS contends that the Father owes tax debts for the years 2015, 2016, and 2017 totaling \$47,562. The IRS makes no claim that Plaintiff owes any part of that tax debt or that she owes any tax debt at all.

The Specific IRS Lien Giving Rise to this Action

10. On October 7, 2019 the United States, acting through its agency the IRS, served the tax lien attached as Exhibit A hereto on the home of Melissa Marshall located at 11 Stage Fort Avenue in Gloucester, doing so by filing the original of Exhibit A at the Registry of Deeds for Southern Essex County in Salem, Massachusetts and specifying that the property against which the lien was being asserted was 11 Stage Fort Avenue, Gloucester, Massachusetts.

11. There is and cannot be any valid claim by the IRS that Plaintiff owes any tax obligations, much less does she owe the IRS for any tax obligations of her father arising from the tax years 2015, 2016, and 2017 which are the ones stated in the lien filed on her property.

12. As to her own taxes, she is fully paid up to the current tax year, having filed all tax returns due and paid all taxes due thereon. Therefore, Plaintiff owes no taxes to the IRS which could be the subject of an IRS tax lien such as the one the IRS has filed on her home.

COUNT ONE

(For Declaratory and Injunctive Relief)

13. Plaintiff repeats each of the allegations in paragraphs 1 through 12 above as if fully re-alleged herein.

14. There presently exists an actual controversy between Plaintiff and Defendant United States as to whether the tax lien which is Exhibit A is properly filed on the property of Plaintiff to secure payment of the tax debt of her Father, Michael T. Marshall, with Plaintiff contending that her home cannot stand for any such debt or lien and the United States contending that the lien on the her home is proper.

15. Plaintiff therefore asks that this Court declare the rights of the parties and specifically to declare that the United States has no right to have filed, and has no right to maintain, any lien on her property and that this Court order the lien currently filed on her property removed forthwith.

16. The continued presence of the lien on her property is causing and will continue to cause irreparable damage to Plaintiff in that the presence of that lien wrongfully encumbers the property, wrongfully restrains Plaintiffs ability to transfer or borrow on said property, and causes injury to her credit. Therefore, this Court should mandatorily enjoin the IRS to file all necessary paperwork in the registry of deeds withdrawing and vacating that lien.

COUNT TWO

(For Damages for Wrongful Levy)

17. Plaintiff repeats each of the allegations in paragraphs 1 through 16 above as if fully re-alleged herein.

18. The above described lien is unlawful and its presence has caused Plaintiff financial harm in amounts to be proven at trial.

19. Plaintiff seeks recovery of those damages in this action, along with interest.

WHEREFORE, Plaintiff prays for judgment as follows:

(1) For a declaratory judgment that the lien is improper and should be ordered vacated, that the United States be ordered to file papers doing so forthwith, with said papers stating that state in those papers that the lien was filed in error because the owner of that property owed no taxes to the IRS;

(2) For damages in the amount in the amount to be proved at trial, plus interest allowable by law;

(3) For attorneys' fees and costs of this action; and

(4) For such other and further relief as this Court deems proper.

Respectfully Submitted,

MARKHAM & READ,

John J.E. Markham, II

John J.E. Markham, II

(BBO 638679)

One Commercial Wharf West

Boston, MA 02110

(617) 523-6329

jmarkham@markhamread.com

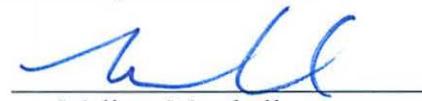
Attorney for Plaintiff Melissa Marshall

VERIFICATION

I, Melissa Marshall hereby declare that I have read the forgoing verified complaint and I believe the factual assertions contained in it to be true and correct to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United states that the forgoing is true and correct.

Executed this 4th of January, 2020 in Boston, Massachusetts.



Melissa Marshall

**EXHIBIT “A” TO THE COMPLAINT
OF MELISSA MARSHALL**

E

38-7

18332

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:

WAGE & INVESTMENT AREA #1
Lien Unit Phone: (800) 829-7650

Serial Number

383617519

For Optional Use by Recording Office

SO.ESSEX #522 Bk:37913 Pg:231
10/07/2019 03:33 FTL Pg 1/1

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer MICHAEL T MARSHALL

Residence 11 STAGE FORT AVE
GLOUCESTER, MA 01930-4030

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2015	XXX-XX-8249	10/01/2018	10/31/2028	21984.60
1040	12/31/2016	XXX-XX-8249	03/11/2019	04/10/2029	12023.44
1040	12/31/2017	XXX-XX-8249	03/11/2019	04/10/2029	13554.19

Place of Filing Registry of Deeds Southern Essex County Salem, MA 01970	Total	\$ 47562.23
--	-------	-------------

This notice was prepared and signed at MANHATTAN, NY, on this,the 26th day of September, 2019.

Signature

for LISA WILLIAMS

Title

ACS W&I
(800) 829-7650

11-00-0000

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

Pursuant to Massachusetts General Laws, Chapter 62C, section 50, the Department of Revenue (DOR) has placed a lien in favor of the Commonwealth of Massachusetts upon all property and rights to property belonging to the taxpayer(s) identified below for assessed and unpaid taxes, interest and penalties.

After 10 years and 30 days from the date of each assessment listed below, this notice shall operate as a Release of Massachusetts Tax Lien, unless a Notice of Massachusetts Tax Lien has been refiled.

Taxpayer Information

Taxpayer Name **MICHAEL MARSHALL**
 Social Security Number **XXX-XX-8249**
 Address **11 STAGE FORT AVE
GLOUCESTER MA 01930-4030**

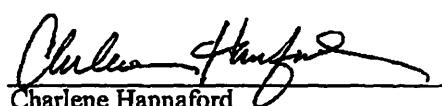
Lien Information

Registry of Deeds Location **ESSEX, SALEM, MA**
 Secretary of State Office Location **BOSTON, MA**
 Lien Identification Number **41338**

Assessment Details

MA ID	Account Type	Assess Date	Amount Due	MA ID	Account Type	Assess Date	Amount Due
18166713	Personal Inc	08-23-2018	\$3,674.51	18166713	Personal Inc	01-14-2019	\$5,441.62

SO.ESSEX #247 Bk.37728 Pg.273
 08/05/2019 11:02 NML Pg 1/1


 Charlene Hannaford
 Deputy Commissioner

Total Amount Due: \$9,116.13